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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/623,030

Filing Date: July 18, 2003

Appellant(s): ANDERSON ET AL.

Richard L. Bridge
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 1, 2010 appealing from the Office action mailed December 30, 2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:
Claims 1 – 18 and 33 – 36 are rejected and pending in the application.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5,503,076	YEO	4-1996
6,680,784	NOMURA ET AL.	1-2004
5,612,118	SCHLEINZ ET AL.	3-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-13,15-18 and 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yeo (US 5,503,076) in view of Nomura et al. (US 6,680,784).

Regarding claims 1-3, 15, and 17-18: Yeo discloses a multi-color printed nonwoven web laminate 10 or any other type of substrate layer (column 4, lines 8-11, column 5, lines 29-34) for use in an outer cover of absorbent personal care products such as diapers and incontinence garments (column 1, lines 12-14 and column 7, lines 52-57) comprising a fibrous, absorbent facing layer/overlay 12 and substrate layer/additional other component 14, and an image including at least one ink having the color of red, blue, and green 16a, 16b, 16c and inherently black [Note that the primary colors red, blue, green when mixed form black] as set forth in column 4, lines 8-16 and figure 1

While, Yeo discloses the image being printed in a non-contact manner via flexographic or ink-jet printing for good print pattern definition (column 8, lines 49-52) and the laminate in one embodiment being printed at a line speed of approximately 100 feet per minute (column 10, lines 39-42), the examiner contends that the manner in which the image is printed (i.e. a non contact manner) is considered as a product by process limitation that does not provide a patentable distinction between the claimed invention and the prior art.

Yeo does not expressly disclose the specific colored inks in a specific coverage percentage area values. However, Yeo does allow for the pigment to be used in the claimed range as set forth in col. 2, lines 59 – 60. Yeo also discloses both colors as claimed.

Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Yeo with the desired colors in the desired coverage

ratio since the general concept of providing pigmentation in the claim range has been established by the Yeo.

Yeo further does not expressly disclose an image resolution of 100 dpi.

Nomura et al. (hereinafter “Nomura”) discloses high speed printing with a low image resolution as set forth throughout the disclosure, see especially col. 1 – 4.

One would be motivated to modify the image of Yeo to have the resolution of Nomura for an excellent quality image and efficient print control technology since both references are concerned with the effective printing of images on substrates.

Regarding claims 4-7: Yeo further discloses the facing layer/outer cover 12 comprises a white background (which inherently is formed via the loading of fibers with titanium dioxide which produces a white color) on which an image such as stars and hearts is printed (column 5, lines 12-16 and figures 1 and 3).

Regarding claims 8-9 Yeo further discloses the image includes a separable design element having a periphery and interior, the interior being free of black ink shading and the design element outlined in black ink (figure 3).

Regarding claim 10 Yeo further discloses the image being printed in a non- contact manner via flexographic or ink-jet printing for good print pattern definition as discussed above with respect to claim 1, the image inherently being printed with the highest threshold of blank ink in order to maximize the image quality.

Regarding claims 11-12 Yeo further discloses a focal element 16b for example (figure 1). Yeo/Nomura does not expressly disclose the dimensions of the design elements. The design elements are result effective variables since they are a result of the number

of designs placed on the substrate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Yeo/Nomura with design elements dimensions, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch and Slaney, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 13 Yeo discloses water-based inks that may include wax additives (column 6, lines 53-60 and column 7, lines 39-44).

Regarding claim 16 Yeo/Nomura do not expressly disclose a color difference value (DE*). Color difference is a result effective variable since it is dependent on the change in lightness and change in chroma as disclosed by Applicant (page 21, paragraph 0049). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Yeo/Dispoto with the color difference values for optimum image performance, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch and Slaney, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). Furthermore, when the reference discloses all the limitations of a claim except a property or function (i.e.: does not expressly disclose the color difference values), and the examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof to applicant as in In re Fitzgerald, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP §§ 2112- 2112.02.

Regarding claim 33 see the discussion above with respect to claims 1 and 16.

Regarding claims 34 – 36 see col. 4, lines 8 – 22 and col. 8, line 66 to col. 9, line 10. The examiner notes that the manner in which the ink is applied is considered functional. Yeo discloses the use of ink jet printing as does the applicant. In light of such, the examiner contends that the device of Yeo is fully capable of performing the recited function.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yeo (US 5,503,076) in view of Nomura et al. (US 6,680,784), and further in view of Schleinz et al. (US 5,612,118).

Yeo/Nomura do not expressly disclose the outer cover material that is the printing substrate is made of an extensible material.

Schleinz discloses absorbent training pant 20 with absorbent at crotch section, liquid permeable liner and elastic outer cover 42 for improved elasticity throughout the pant body, the outer cover having an outer surface 44 with a plurality of printed graphics 46 thereon (column 3, lines 52-58, column 4, lines 21-23, figure 1).

One would be motivated to modify the outer cover of Yeo/Dispoto with the extensible outer cover of Schleinz for improved elasticity throughout the pant body since both references disclose disposable absorbent articles having graphics printed on the outer cover.

Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the outer cover, thus providing an elastic and extensible outer cover.

(10) Response to Argument

The appellant's arguments are found non persuasive because the arguments are directed toward functional limitations. The appellant is reminded that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

The appellant's argument are more specific than the claim language. Initially, it is noted that the claimed coverage area ratio is not clearly defined with respect to a comparison between two elements. As such, the amount of respective colored ink may be compared to the amount of another respective colored ink and/or an underlying layer, and/or the article as a whole, etc.

Further, it is noted that these coverage area ratios occur under specific conditions (i.e., if a specific color is present and/or is applied at a maximum threshold). If the specific colored ink is not present, then the coverage ratios are not applicable. As previously discussed, both the instant application and the reference disclose the use of ink jet printing to apply the image and therefore, one could reasonably presume that the disclosure of Yeo would be fully capable of performing the recited function. Further, the contention that any image in the area may be compared to any and/or all other portions of the article in order to meet the claimed limitation is still applicable to the claims.

It is further noted that Yeo provides pigmentation in the claimed range as set forth in col. 8, lines 20 – 23. As only one color is needed to meet the claimed limitation,

the disclosure may be considered to read on the claimed language. Notwithstanding, the modification of the color and corresponding coverage configurations is considered to be within the level of ordinary skill in the art.

The appellant discloses that ink jet printing produces the claimed results.

Similarly, Yeo discloses the use of ink jet printing for applying images to substrates.

When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. See MPEP 2112.02.

With respect to the appellant's arguments regarding the combination of references, the examiner maintains that Nomura teaches high speed printing with a low image resolution as set forth throughout the disclosure, see especially col. 1 – 4.

One would be motivated to modify the image of Yeo to have the resolution of Nomura for an excellent quality image and efficient print control technology since both references are concerned with the effective printing of images on substrates.

Regarding the Declaration filed January 15, 2007, the examiner notes that the Declaration was sufficient to overcome the rejection at that time.

The examiner maintains the rejection of claims 11 – 12 as the design elements and the subsequent dimensions are a direct result of the number of designs placed on the substrate and/or the type of garment being produced. In light of such, the dimensions may be considered as result effective variables and would be obvious to modify based on the intended use of the product.

As to the appellant's remarks regarding uniform dot sizes, the examiner contends

that the claimed limitations are functional; however, the appellant's remarks do not appear to be commensurate with the scope of the claims. The claim requires the dots as a whole to produce a uniform volume of ink.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Michele Kidwell/

Primary Examiner, Art Unit 3761

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/Tatyana Zalukaeva/

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/Eric Nicholson/

RQAS -3700